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Decision 03-12-066 December 18, 2003

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of BAKMAN WATER COMPANY (U 219 W) for Authority to: (1) Remove the Proceeds of Water Contamination Lawsuits from Contributions-In-Aid-of-Construction, (2) Increase Rate Base, and (3) Recover Increased Revenue Requirements in Rates.	Application 02-07-025 (Filed July 9, 2002)

ORDER MODIFYING DECISION 03-10-002 AND DENYING REHEARING

I. SUMMARY

This decision modifies D.03-10-002 (hereinafter, "the Decision") and denies the rehearing application by the Bakman Water Company (Bakman). The Decision granted Bakman an increase in rates for its general rate case (GRC) for test year 2000, and set rates under the operating ratio method at a 10 percent rate of margin. This decision on rehearing clarifies the Commission's rationale for requiring Bakman to refund to the ratepayers monies accrued in a loan reserve account.

II. FACTS/BACKGROUND

This matter involves a GRC for the Bakman Water Company (Bakman), a Class C water utility serving 1830 customers, for test year 2000. On January 9, 2002 in Resolution W-4310, the Commission decided the contested issues in Bakman's test year GRC. The contested issues included the ratemaking treatment of proceeds from two lawsuits concerning the contamination of Bakman's wells. The lawsuits arose as a result

of the contamination of Bakman's wells by E&J Gallo and Shell Oil Company et al.[1] Although the Commission adopted the Water Division's recommendation to reduce Bakman's rate base to zero by recording the lawsuit proceeds as contributions in aid of construction (CIAC), it authorized Bakman to file an application to support its adjustments to CIAC and the rate base. On July 9, 2002, Bakman timely filed this general rate application.

In 1989, prior to filing the lawsuits, Bakman was required by the Department of Health Services (DHS) to remedy the contaminated water wells. In D.91-03-065, the Commission authorized Bakman to obtain a loan of $615,300 from the Department of Water Resources (DWR) under the Safe Drinking Water Bond Act (SDWBA) to cover repair and remediation costs. To pay off the loan, the Commission authorized Bakman to collect a monthly surcharge from its customers beginning March 31, 1991.[2]

The Water Division was the only party protesting Bakman's application. The primary issue in the GRC was the appropriate disposition, between ratepayers and shareholders, of the lawsuit proceeds. Prior to serving its testimony, the Water Division conducted an audit of Bakman's books and records. On February 13 and 14, 2003, evidentiary hearings were held. The case was submitted on May 23, 2003. The Proposed Decision of Administrative Law Judge (ALJ) Econome was issued on August 21, 2003. Comments were filed on September 10, 2003, and reply comments were due on September 15, 2003.

On October 3, 2003, the Commission issued D.03-10-002, which granted Bakman an increase in rates for test year 2000, and set rates under the operating ratio method at a 10 percent rate of margin.

On November 3, 2003, Bakman timely filed an application for rehearing. Bakman alleges that the decision's reference to "the SDWBA loan reserve account" is

[1] Bakman filed suit against E&J Gallo in September 1992, and against Shell Oil Company et al. in May 1993. Both lawsuits eventually settled.

[2] The surcharge was not scheduled to end until 2007, but for the Commission's order terminating it on the date the tariffs authorized by the Decision become effective.

factual error because Bakman does not have an account specifically dedicated to loan reserves. It also asserts that the decision unlawfully relies on Water Division comments that introduced new evidence after the close of the record. Finally, Bakman states that it was unlawfully deprived of its due process rights to present evidence in response to the Water Division's recommendation to refund reserve amounts to ratepayers.

III. DISCUSSION

We first dispose of a matter raised by Bakman that fails to meet minimal standards for establishing legal or factual error. Bakman asserts that the Decision did not address a relevant issue it raised in testimony and briefs. (Bakman Rhg. App., p. 5.) The issue concerns Bakman's intentional deferral of its GRC until it completed amortization of the lawsuit proceeds as income. Bakman maintains that by deferring its GRC, it relinquished an opportunity for increased rates and net revenue, and that the Water Division knew or should have known about the amortization. At best, Bakman's argument is speculative. Bakman cannot accurately predict what the outcome of a GRC would have been had it come forward and applied sooner. Bakman's experiencing of remorse for not having applied for a GRC sooner does not convert its unfounded claim into a relevant issue.[3] Furthermore, the Commission is not bound to address each and every issue that an applicant considers relevant. Bakman must accept the consequences of its judgment call. Further examination of this issue is not required.

A. The SDWBA Loan Reserve Account.

Bakman charges that the Decision's reference to "the SDWBA loan reserve account" is factual error because Bakman does not have an account specifically dedicated to loan reserves. Whether or not Bakman has an account precisely so-named is not dispositive. The material fact is that Bakman was obliged, under DWR requirements, to

[3] The Decision noted that many problems arose because Bakman went more than seven years between GRC filings, and the Commission therefore required Bakman to file its next GRC no later than three years from the effective date of the Decision. (Decision, *mimeo*, p. 20.)

deposit over-collections in a reserve account with a fiscal agent to accumulate a reserve of two semi-annual payments over a 10-year period.[4] Bakman subsequently admits that its account with US Bank is "the nearest match to Water Division's invention 'the SDWBA reserve account'." (Bakman's Rhg. App., p. 4.) We note that the coinage of the account name was clear enough for Bakman to know which account was being addressed.

In sum, Bakman's claim of error is exaggerated beyond its significance. The issue of the precise name of the reserve account is of no consequence and does not justify rehearing. Moreover, Bakman may have waived the argument by itself using the very same name of an account that it says does not exist. In its Reply Comments on the Proposed Decision of ALJ Econome, Bakman urged the Commission to disregard the Water Division's comments in part because "the record includes evidence regarding the *SDWBA loan reserve account*." (Reply Comments of Bakman Water Company on Proposed Decision of ALJ Econome, p. 1; emphasis added.)

B. The Commission Did Not Rely on the Water Division's Estimate of $52,000 To Be Refunded to the Ratepayers.

Bakman contends that the Decision unlawfully relies on Water Division comments submitted after the close of the record, in violation of Rule 77.3 of the Commission's Rules of Practice and Procedure. (Bakman Rhg. App., p. 4.) Rule 77.3 provides in pertinent part that comments on proposed decisions shall focus on factual, legal or technical errors. Bakman asserts that the Water Division did not allege any factual, legal or technical error. If a party does not comply with Rule 77.3, the remedy is for the Commission not to accord any weight to the comments.[5]

Bakman alleges the Commission relied on the Water Division's recommendation that approximately $52,000 in the SDWBA reserve account should be refunded to ratepayers. This is not so. Ordering Paragraph No. 3 of the Decision

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[4] D.91-03-065, p. 4. It was contemplated that over-collections would accrue because proposed surcharge revenues would exceed loan repayment requirements.

[5] This is the remedy the Commission applied in D.02-12-062 (2002 Cal. PUC LEXIS 925), where some parties failed to comply with Rule 77.3 when commenting on the ALJ's proposed decision.

provides as follows: "Bakman shall file an advice letter within 30 days after the effective date of this decision with a plan for refunding to ratepayers all of the monies in the SDWBA loan reserve account. This advice letter shall be effective upon Commission approval."[6] The order does not specify that the amount of $52,000 should be refunded to ratepayers; thus, there was no need to test that amount by cross-examination, as Bakman urges. Therefore, Bakman's claim that the Commission relied on the Water Division's estimate of $52,000 in the SDWBA reserve account is without merit,

C. The Refund to Ratepayers of Monies in the SDWBA Loan Reserve Account Evidences the Commission's Intention for Bakman to Assume Sole Responsibility for Future SDWBA Loan Payments.

Bakman asserts that the Decision deprived it of its due process rights to present evidence in response to the Water Division's new recommendation to refund reserve amounts to ratepayers. It should come as no surprise that the Commission would order the refund of reserve amounts to the ratepayers. Ratepayers have been paying down the SDWBA loan since 1991, and are still paying since the surcharge is not scheduled to end until 2007. However, pursuant to Ordering Paragraph No. 2 in the Decision, the surcharge payments imposed on ratepayers shall be terminated on the date the tariffs authorized by the Decision become effective. The Commission also directed that the remaining loan balance shall be paid by shareholders, not ratepayers. In the interest of equity, any monies accrued in the SDWBA loan reserve account should be refunded to the ratepayers because the ratepayers funded that account.[7]

The Decision made it very clear that Bakman should assume future SDWBA loan obligations. It is consistent with Bakman's assumption of future loan payment obligations that there should be a refund to the ratepayers of monies that they paid into the SDWBA loan reserve account. In this regard, the Decision is consistent with the

[6] Bakman filed Advice Letter 57 on November 3, 2003.

[7] Money in the reserve account is surplus money that the Commission intended Bakman to use if additional revenue is needed to meet the loan repayments because it did not receive sufficient revenue from the surcharges.

Commission's treatment of surplus accrued in a balancing account in D.91-03-065, the decision that granted Bakman the authority to enter into the SDWBA loan with DWR. D.91-03-065 states as follows: "As a condition of the rate increase granted herein, Bakman shall be responsible for refunding or applying on behalf of the customers any surplus accrued in the balancing account when ordered by the Commission." (D.91-03-065, Ordering Paragraph No. 4.) We therefore clarify that the reason for ordering the refund of the SDWBA loan reserve account to the ratepayers is more properly attributable to the Commission's intention that Bakman assume future SDWBA loan obligations, and is consistent with the comparable treatment of surplus funds in the balancing account in D.91-03-065. Accordingly, we modify the Decision to clarify the rationale for ordering the refund of monies in the SDWBA loan reserve account to the ratepayers.

Contrary to Bakman's suggestions otherwise, the Commission acknowledges that its procedures are subject to federal and state due process requirements. (Cal. Const. Art. XII, sec. 2; U.S. Const., Fifth & Fourteenth Amends.) The Commission has met those requirements here. The Commission satisfied the due process requirement in this rate proceeding by providing for evidentiary hearings, and giving the parties an opportunity to submit opening and reply comments on the proposed decision. Bakman took advantage of the opportunity to be heard by participating in the hearings and by filing little more than a page of Reply Comments. Since the Commission did not adopt the Water Division's estimate of $52,000 and the refund of all of the monies in the SDWBA loan reserve account to the ratepayers is consistent with the Commission's determination that Bakman should assume future SDWBA loan obligations, there are no grounds for rehearing.

IV. CONCLUSION

For all of the foregoing reasons, we deny rehearing but modify the Decision to clarify the Commission's reasons for requiring Bakman to refund monies in the SDWBA loan reserve account to the ratepayers. In all other respects, we deny rehearing.

Therefore, **IT IS ORDERED** that:

1. Page 23, the last two sentences at the top of page, should be deleted and replaced with the following:

> We modify the proposed decision to order a refund to the ratepayers of all monies in the SDWBA loan reserve account. This modification is consistent with the Commission's intention to have Bakman assume future SDWBA loan obligations, and with our treatment of surplus funds in the balancing account in D.91-03-065. (See D.91-03-065, Ordering Paragraph No. 4.) Accordingly, all monies in the SDWBA loan reserve account should be refunded to the ratepayers.

2. The rehearing application by the Bakman Water Company of D.03-10-002 is denied.

3. This proceeding is closed.

This order is effective today.

Dated December 18, 2003, at San Francisco, California.

MICHAEL R. PEEVEY
President
CARL W. WOOD
LORETTA M. LYNCH
GEOFFREY F. BROWN
SUSAN P. KENNEDY
Commissioners